IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3393 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUNVANTBHAI THAKOREBHAI RATHOD

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 3393 of 2003

MR RAKESH B. SHUKLA FOR MR DEVANG VYAS for Petitioner

MR SJ DAVE, AGP, for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 12/05/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

1. Age old contest between liberty and detention has once again surfaced in this petition at the instance of

the petitioner-detenu by invocation of the provisions of Article 226 of the Constitution of India.

2. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

3. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, non-transferable, non-negotiable natural rights. Justice, liberty and equality have been pursuits of human kind and are sine qua non for organized civilised society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention provided material and important constitutional and statutory safeguards are observed and subjective satisfaction has been reached on an objective assessment of the sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge against the detention order in this petition on the basis of the material emerging from the record.

4. Factual Projection:

Challenge in this Special Civil Application is to the order of detention dated 18.9.2002 passed under the provisions of section 3(2) of the Gujarat Prevention of

Anti Social Activities Act, 1985 (Act for short) by the Commissioner of Police, Surat City, on the ground that the petitioner is a "bootlegger" and his activities are prejudicial to the maintenance of public order and that many criminal cases are pending against him.

5. The facts emerging from the record of the case show that the petitioner-detenu came to be arrested on 18.4.2001, for the first offence, on 2.12.2001 for the second offence, 4.12.2001 for the third offence, 19.5.2002 for the fourth offence and on 8.7.2001 for the fifth offence. The order of detention came to be recorded on 18.9.2002. Thus, there is delay of more than two months in passing the detention order. It is very well propounded and expounded by the Hon'ble Apex Court in the case of Pradeep N. Paturkar v. S. Ramamurthi, AIR 1994 SC 656 that considering the unexplained delay whether short or long, especially when the detenu has taken a specific defence or plea of delay, the order of detention has to be quashed. No doubt, it is true that delay, ipso facto, in passing the order of detention after an incident or incidents would not be fatal to the detention of a person, for, in certain cases it may be unavoidable or reasonable. What is required by law is that the delay has to be satisfactorily accounted for or explained by the detaining authority so as to obliterate the snapping of link between the prejudicial activities and the purpose of detention. In the facts of the present case, the delay has not been explained much less satisfactorily. The detention order, therefore, deserves to be quashed and set aside.

6. In the result, the petition is allowed. The order of detention dated 18.9.2002 is quashed and set aside. The petitioner-detenu shall be set at liberty forthwith provided he is not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(J.N.Bhatt, Acting CJ)

(vjn)